IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1122 OF 2006

Satish Choudhary. ..Applicant.
Vs.
The State of Maharashtra and ors. ..Respondents.

Mr. Vikram Choudhary with Mr. S.N. Kantawala i/by M/s. Khaitan and Company for the Applicant.

Ms.S.V.Gajare, APP. for the State.

Mr.H.V.Mehta for the Respondent Nos. 3 and 5.

CORAM : R.S. MOHITE,J.
DATED : 12/6/2006.

P.C.

1. This is an application for grant of anticipatory bail. The applicant is shown as an accused in C.R.No.16/2005 registered by Sahar Police Station for alleged offence under Section-489B, 465, 467, 468, 471, 474, 420 read with 34 of the I.P.C. and U/s.12(a) of the Passport Act. The said crime has been registered on the basis of an F.I.R. by one Rajendra Sriram Rawat who is a custom officer. It is mentioned in the F.I.R. that on 22.2.2004 the said Custom Officer was working on night duty when he along with other Custom Officers intercepted one Mr. Pankaj Kishore Jhunhunwala with 70,000 US dollers. During the course of interrogation said passenger Pankaj Jhunhunwala stated that the said

foreign currency has been given to him by the present applicant with instructions to handover the same to one Mohd. Mari at Dubai. The premises of the applicant was therefore, searched and in the course of the search, foreign currency of different countries and 19 passports of different persons came to be seized. On examining the passports, it was noticed that endrosements on the passport indicated that foreign exchange has been obtained as basic travel quota (B.T.Q.). It is the case of the respondent that such foreign exchange is issued only to bonafide passengers who are travelling abroad to meet their travelling expenses. However, the investigation reveals that none of the passport holders had travelled abroad and the matter was thus intimated to the Regional Passport Officer for verification of passports. The statements of various passport holders were recorded and it was found that some of the passports were reported lost long back and some of the passports were given to the agents of the holders for issuance of visa by the passport holders. Further, the addresses of the passport holders were found fictitious and not correct.

2. It was sought to be argued that the custom authorities had arrested the applicant on 22.3.2004 for the same allegations as contained in the F.I.R. The applicant was however, released on bail on 24.3.2004 by

the Additional Chief Metropolitan Magistrate. While granting such bail, the Addl. Chief Metropolitan Magistrate had passed strictures against the custom authorities for not presenting the accused within 24 hours before the court. It appears that, after the bail was granted the present accused was detained under COFEPOSA,1974 and when that order was quashed, the concerned Custom Officer has filed the present F.I.R. on 29.1.2005.

3. It is true that in the order granting bail, certain adverse observations have been made by the Additional Metropolitan Magistrate against the Customs Officers for not presenting the applicant in court within 24 hours. It is also very strange that the first informant has lodged an F.I.R. on 29.1.2005 even though he was aware of the factual aspect of the case as back as on 21.1.2004. The delay in filing the F.I.R. is suspicious and the matter will have to be looked into. Be that as it may, it was also contended by the applicant that he was an authorised dealer of foreign exchange. The point in the present case however, is not relating to the holding of the foreign exchange or even to possessing some US dollers. The real question here is the finding of endorsements on the seized passports which are reported to be lost given by the holders to the agent for different purposes. It has to be found

out as to how such passports found were with the present applicant. It is in this context that the police have added non bailable offence under Section 467 of the I.P.C. which is also a serious offence punishable with life imprisonment. The question as to whether pass port holders were cheated by their agents in any way and as to whether there is any bogus entry has to be gone into. Such offences cannot be gone into by the Custom Officer and the Custom Officer could not have arrested the applicant for offences under the Indian Penal Code. In the circumstances, I am not inclined to grant anticipatory bail to the applicant. Hence, application is rejected.

4. At this stage the Advocate for the applicant states that he would like to approach the Apex Court against this order. He states that he had been granted interim relief and the same is running since 24.3.2006 and therefore, this order may be stayed. The A.P.P. opposed this application. It is noticed that the applicant was in the custody of the Custom Department for about 10 days and the F.I.R. was lodged by the Custom Officer after the delay of 10 months. In the circumstances, the applicant may not be arrested till 6.7.2006 subject to the condition that he will report to the DCB, CID Unit X, Andheri Mumbai on 14/6/2006, 16/6/2006, 20/6/2006, 22/6/2006, 26/6/2006, 29/6/2006,

3/7/2006 and 4/7/2006. It will also be a further condition that an undertaking will be filed in this court undertaking that the applicant will surrender to the Investigating Officer on 7.7.2006 if no order is obtained from the Apex Court on 6.7.2006. If the undertaking is not filed on or before 15.6.2006, the applicant will become liable to be arrested without any further order of this court. Copy of the undertaking be also furnished to the other side.

5. Parties to act on the authenticated copy.

(R. S. MOHITE, J.)